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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,416	04/12/2004	Colin Dugdale	12026-5	2558

7590 01/03/2006

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/822,416

Applicant(s)

DUGDALE ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/12/04</u> . | 6) <input type="checkbox"/> Other: ____  |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6,8,10,13, and 20-25 are rejected under 35 U.S.C. 102(b) as being anticipated by [www.halfbakery.com/idea/Cream\\_20Cheese\\_20Rings](http://www.halfbakery.com/idea/Cream_20Cheese_20Rings).

In regard to claim 1, the halfbakery.com website discloses a bagel topping that comprises a monolithic cream cheese disk with an aperture extending between the surfaces. Thus, halfbakery.com anticipates claim 1. Note that the product is further described as a pre-packaged, preformed cream cheese ring separated by thin plastic sheets and is used by applying the cream cheese ring to a cut bagel, which is precisely applicants intended function. In regard to claim 2, the product of halfbakery.com is not formed insitu. Also, since it is intended for a bagel with a hole, it is considered that the product of halfbakery.com would have the aperture around the centerline (claim 3). In regard to claim 8, halfbakery.com discloses a thickness within the recited range (i.e. 1/8"). In regard to claim 10, the cream cheese ring has a substantially 3D shape since it is ring shaped and is stackable. In regard to claim 13, how the cream cheese is shaped is not seen to have an affect on the article in the absence of a showing to the contrary. Thus, the product by process language is not seen to provide a product any different from the product of halfbakery.com and thus the reference anticipates claim 13 as well. In regard to claims 20-25, which recite the method of associating the cream cheese with the bagel and the product derived from the method, halfbakery.com clearly teaches

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placing the preformed cream cheese on a half of a bagel and then placing the other half over the cream cheese, and with or without performing any spreading (i.e. any spreading would be an option for the consumer).

Claims 5,7,9,11,12, and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Del Toro Estrada (MX2001012697), Urakuchi et al (JP 4-187047), Diaz (5,518,746), Fromageries Grandmurols (FR2,050,342), Hoashi (JP8-154635), Harris US2004/0151820), Gray (6,759,069), and Caiello (4,159,349).

Halfbakery.com is relied on as above to teach ring shaped cream cheese, with, of course, a hole, for use on a bagel. Del Toro Estrada and Urakuchi et al can be relied on as further evidence of packaged, preformed, slice type, cream cheese. Claim 5 recites that the cream cheese has a polygonal shape. Once it is known to provide a preformed cream cheese, or any other food material, the particular shape one chooses to impart to the cream cheese is seen to have been an obvious matter of design. Halfbakery.com preforms the product for a circular bagel. Thus, the art teaches the conventionality of providing the product with a shape compatible to the product it is to be associated with. Diaz can be relied on to show various edible products, including cream cheese, having various geometries including annular and polygonal. Fromageries Grandmurols and Hoashi are relied on as further evidence of cheese products with holes, whereas Harris, Gray and Caiello are relied on as further evidence of cheese products preformed for association with other food products such as sandwich bread and pizza. Claim 7 recites that the surfaces are substantially flat.

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Halfbakery.com refers to slicing cream cheese and creating a hole after slicing. Thus, it would appear that the reference clearly teaches a ring with flat surfaces, although this term is not used. Also, the fact that the rings are interleaved with sheet material and stacked would strongly imply flat surfaces. In any case, as evidenced by the art taken as a whole, preformed cream cheese slices with flat surfaces are conventional, as well as cream cheese rings with flat surfaces (e.g. Diaz, Fig.2C) and other cheese and non-cheese products slated to be used in sandwich making. To modify Halfbakery.com, if necessary, and provide the cream cheese ring with flat surfaces would therefore have been an obvious expedient and an obvious matter of design in view of the art taken as a whole. In regard to claim 9, the particular type of conventional cream cheese one chooses to employ is seen to have been an obvious result effective variable. Applicants are obviously not the inventors of artificial cream cheese. Finally, claim 16 recites that the cheese shape is made from more than one portion. As evidenced by Caiello, it is well established in the art to provide a preformed shape of cheese that is circular, square, rectangular, etc. wherein the preformed shape comprises either one integral shape or a plurality of preformed shapes which combine to form the overall desired preformed shape. For example, Caiello employs four sector shaped pieces of cheese to form a circular shaped piece. To modify the combination and employ segments to form a whole would therefore have been obvious in view of the art taken as a whole.

The remainder of the references cited on the PTO892 form are cited as art of interest.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein  
**STEVE WEINSTEIN** 1761  
**PRIMARY EXAMINER**  
12/20/05